

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SAMHITA GERA, Individually and on Behalf
of All Others Similarly Situated,

Plaintiff,

vs.

UiPATH, INC., DANIEL DINES, and ASHIM
GUPTA,

Defendants.

Case No. 1:23-cv-07908-DLC

MEMORANDUM OF LAW IN SUPPORT OF MOTION OF WU WANG YAO
FOR APPOINTMENT AS LEAD PLAINTIFF AND APPROVAL OF LEAD COUNSEL

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Wu Wang Yao (“Yao”) respectfully submits this memorandum of law in support of her motion, pursuant to Section 21D(a)(3) of the Securities Exchange Act of 1934 (the “Exchange Act”), 15 U.S.C. § 78u-4(a)(3), as amended by the Private Securities Litigation Reform Act of 1995 (the “PSLRA”), for an Order: (1) appointing Yao as Lead Plaintiff on behalf of a class consisting of all persons and entities other than the above-captioned defendants (“Defendants”) that purchased or otherwise acquired UiPath, Inc. (“UiPath” or the “Company”) common stock between period April 21, 2021 and March 30, 2022, inclusive (the “Class Period”) (the “Class”); and (2) approving proposed Lead Plaintiff’s selection of Pomerantz LLP (“Pomerantz”) as Lead Counsel for the Class.

PRELIMINARY STATEMENT

The Complaint in the above-captioned action (the “Action”) alleges that Defendants defrauded investors in violation of the Exchange Act. UiPath investors, including Yao, incurred significant losses following the disclosure of the alleged fraud, which caused UiPath’s share price to fall sharply, damaging Yao and other UiPath investors.

Pursuant to the PSLRA, the Court is to appoint as Lead Plaintiff the movant or group of movants that possesses the largest financial interest in the outcome of the Action and that satisfies the requirements of Federal Rule of Civil Procedure 23 (“Rule 23”). 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I). During the Class Period, Yao purchased 87,000 shares of UiPath stock, expended \$4,806,779 on her purchases, retained 20,000 of her shares of UiPath stock, and, as a result of the disclosures revealing the misrepresentations and/or omissions during the Class Period, incurred losses of approximately \$1,044,449 in connection with her purchases of UiPath stock. *See* Declaration of Jeremy A. Lieberman in Support of Motion (“Lieberman Decl.”), Exhibit (“Ex.”) A. Accordingly, Yao believes that she has the largest financial interest in the relief sought in the Action.

Beyond her considerable financial interest, Yao also meets the applicable requirements of Rule 23 because her claims are typical of absent Class members and because she will fairly and adequately represent the interests of the Class.

To fulfill her obligations as Lead Plaintiff and vigorously prosecute the Action on behalf of the Class, Yao has selected Pomerantz as Lead Counsel for the Class. Pomerantz is a nationally-recognized securities class action firm that has recovered billions of dollars on behalf of investors, as detailed in its firm resume, and is well qualified to serve as Lead Counsel in this Action.

Accordingly, Yao respectfully requests that the Court enter an order appointing her as Lead Plaintiff for the Class and approving her selection of Pomerantz as Lead Counsel for the Class.

STATEMENT OF FACTS

As alleged in the Complaint in the Action, UiPath is a global provider of robotic process automation (“RPA”) software. On April 21, 2021, UiPath conducted its initial public offering (“IPO”), selling over 27.5 million UiPath shares for gross proceeds of more than \$1.5 billion.

The Complaint in the Action alleges that Defendants, throughout the Class Period, made false and/or misleading statements and/or failed to disclose that: (i) UiPath had enacted a widespread discounting program prior to its IPO, which had the effect of temporarily boosting UiPath’s revenue and annualized recurring revenue (“ARR”) metrics, cannibalizing its future sales, eroding UiPath’s margins, and increasing the risk of client churn; (ii) UiPath’s actual total addressable market was not as large as portrayed by Defendants, because many companies included in UiPath’s market survey did not need the type of high-cost, high-functionality automation products offered by UiPath; (iii) UiPath was losing customers to Microsoft, ServiceNow, SAP, Salesforce, IBM, and other established enterprise software vendors that were building automation into their platforms; (iv) UiPath was losing customers due to the increased

availability of low-code automation software offered by vendors, such as Microsoft's Power Automate software, which were capable of addressing the majority of customer use cases at a fraction of the price of UiPath's products and services; and (v) UiPath was suffering from a loss of channel sales due to strained relationships with UiPath's partners as a result of increased competition between UiPath and these partners.

On September 7, 2021, UiPath announced financial results for the quarter ended July 31, 2021. Specifically, UiPath revealed an unexpected slowdown in UiPath's revenues and reported ARR metrics. UiPath further revealed that it had engaged in substantial discounting of its products prior to the IPO and that UiPath was in the process of altering the structure of its contracts to include a "ramping" feature whereby customer contract commitments would start small and increase over time and thereby reduce the need for UiPath to offer widespread discounting as it had before. On this news, the price of UiPath common stock declined more than 12%.

Then, on December 8, 2021, UiPath announced its financial results for the quarter ended October 31, 2021. UiPath revealed that UiPath's growth had stalled further, disclosing that its ARR annual growth rate during the quarter had declined for the third quarter in a row to 58% and that its net new ARR remained subdued at 42% growth year-over-year, down substantially from the 55% growth reported in the first quarter 2022 earnings release. On this news, the price of UiPath common stock declined more than 7% over a two-day period.

Finally, on March 30, 2022, UiPath announced financial results for the quarter and year ended January 31, 2022. UiPath disclosed that it had earned revenues of just \$289.7 million during the quarter, representing year-over-year growth of 39%. UiPath further revealed deeply disappointing ARR and revenue guidance, revealing that the declining growth trends adversely impacting UiPath were expected to continue. UiPath also announced the abrupt departure of

Thomas Hansen, UiPath's Chief Revenue Officer, who was responsible for developing relationships with UiPath's current and prospective customers, expanding UiPath's partnership network, and fostering UiPath's developer community. On this news, the price of UiPath common stock declined more than 25%.

As a result of Defendants' wrongful acts and omissions, and the precipitous decline in the market value of the Company's securities, the plaintiff in the Action and other Class members have suffered significant losses and damages.

ARGUMENT

I. YAO SHOULD BE APPOINTED LEAD PLAINTIFF

Yao should be appointed Lead Plaintiff because, to her knowledge, she has the largest financial interest in the Action and otherwise satisfies the requirements of Rule 23. The PSLRA directs courts to consider any motion to serve as lead plaintiff filed by class members in response to a published notice of the class action and to do so by the later of (i) 90 days after the date of publication, or (ii) as soon as practicable after the Court decides any pending motion to consolidate. *See* 15 U.S.C. § 78u-4(a)(3)(B)(i)-(ii).

Further, under 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I), the Court is directed to consider all motions by plaintiffs or purported class members to appoint lead plaintiff filed in response to any such notice. Specifically, the Court "shall" appoint the presumptively "most adequate plaintiff" to serve as lead plaintiff and shall presume that plaintiff is the person or group of persons that:

(aa) has either filed the complaint or made a motion in response to a notice . . . ;

(bb) in the determination of the court, has the largest financial interest in the relief sought by the class; and

(cc) otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure.

15 U.S.C. § 78u-4(a)(3)(B)(iii)(I).

As set forth below, Yao satisfies all three of these criteria and thus is entitled to the presumption that she is the most adequate plaintiff of the Class and, therefore, should be appointed Lead Plaintiff for the Class.

A. Yao Is Willing to Serve as Class Representative

On September 6, 2023, counsel for the plaintiff in the Action caused a notice to be published over *Business Wire* pursuant to Section 21D(a)(3)(A)(i) of the PSLRA (the “PSLRA Notice”), which announced that a securities class action had been filed against Defendants, and which advised investors in UiPath securities that they had until November 6, 2023—*i.e.*, 60 days from the date of the PSLRA Notice’s publication—to file a motion to be appointed as lead plaintiff. *See Lieberman Decl.*, Ex. B.

Yao has filed the instant motion pursuant to the PSLRA Notice, and has attached a sworn Certification attesting that she is willing to serve as a representative for the Class, and to provide testimony at deposition and trial, if necessary. *See id.*, Ex. C. Accordingly, Yao satisfies the first requirement to serve as Lead Plaintiff of the Class.

B. Yao Has the “Largest Financial Interest” in the Action

The PSLRA requires a court to adopt a presumption that “the most adequate plaintiff . . . is the person or group of persons that . . . has the largest financial interest in the relief sought by the class.” 15 U.S.C. § 78u-4(a)(3)(B)(iii). To the best of her knowledge, Yao has the largest financial interest of any UiPath investor or investor group seeking to serve as Lead Plaintiff. For claims arising under federal securities laws, courts frequently assess financial interest based upon the four factors articulated in the seminal case *Lax v. First Merchants Acceptance Corp.*: (1) the number of shares purchased during the class period; (2) the number of net shares purchased during the class period; (3) the total net funds expended during the class period; and (4) the approximate losses suffered. No. 97 C 2715, 1997 WL 461036, at *5 (N.D. Ill. Aug. 6, 1997). In accord with

other courts nationwide,¹ these *Lax* factors have been adopted and routinely applied by courts in this judicial district. *See, e.g., Chahal v. Credit Suisse Grp. AG*, No. 18-CV-2268 (AT) (SN), 2018 WL 3093965, at *4 (S.D.N.Y. June 21, 2018); *Nurlybaev v. ZTO Express (Cayman) Inc.*, No. 17-CV-06130 (LTS) (SN), 2017 WL 5256769, at *1 (S.D.N.Y. Nov. 13, 2017); *Pirelli Armstrong Tire Corp. Retiree Med. Benefits Tr. v. LaBranche & Co.*, 229 F.R.D. 395, 404-05 (S.D.N.Y. 2004).

During the Class Period, Yao: (1) purchased 87,000 shares of UiPath stock; (2) expended \$4,806,779 on her purchases of UiPath stock; (3) retained 20,000 of her shares of UiPath stock; and (4) as a result of the disclosures of the fraud, incurred losses of approximately \$1,044,449 in connection with her Class Period purchases of UiPath stock. *See* Lieberman Decl., Ex. A. To the extent that Yao possesses the largest financial interest in the outcome of this litigation, she is the presumptive “most adequate” plaintiff. 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I)(bb).

C. Yao Otherwise Satisfies the Requirements of Rule 23

Section 21D(a)(3)(B)(iii)(I)(cc) of the PSLRA further provides that, in addition to possessing the largest financial interest in the outcome of the litigation, a lead plaintiff must “otherwise satisf[y] the requirements of Rule 23 of the Federal Rules of Civil Procedure.” Rule 23(a) provides that a class action may proceed if the following four requirements are satisfied:

(1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class.

Fed. R. Civ. P. 23(a).

¹ *See, e.g., In re Cendant Corp. Litig.*, 264 F.3d 201, 262 (3d Cir. 2001); *In re Olsten Corp. Sec. Litig.*, 3 F. Supp. 2d 286, 295 (E.D.N.Y. 1998); *accord In re Comverse Tech., Inc. Sec. Litig.*, No. 06-CV-1825 (NGG) (RER), 2007 WL 680779, at *6-*8 (E.D.N.Y. Mar. 2, 2007).

In making its determination that a lead plaintiff satisfies the requirements of Rule 23, the Court need not raise its inquiry to the level required in ruling on a motion for class certification. Instead, “[t]he parties moving for lead plaintiff are only required to make a prima facie showing that they meet [the requirements of] Rule 23.” *Aude v. Kobe Steel, Ltd.*, No. 17-CV-10085 (VSB), 2018 WL 1634872, at *3 (S.D.N.Y. Apr. 4, 2018); *see also Kaplan v. Gelfond*, 240 F.R.D. 88, 94 (S.D.N.Y. 2007) (“[A]t this stage of the litigation, only a preliminary showing of typicality and adequacy is required.”). Moreover, “[t]ypicality and adequacy of representation are the only provisions relevant to a determination of lead plaintiff under the PSLRA.” *In re Oxford Health Plans, Inc. Sec. Litig.*, 182 F.R.D. 42, 49 (S.D.N.Y. 1998); *see also Aude*, 2018 WL 1634872, at *3 (“[C]ourts need only consider the typicality and adequacy requirements.”). Here, the Complaint in the Action sufficiently pleads Rule 23(a)(1) numerosity and Rule 23(a)(2) common questions in a manner common to all Class members, including Yao.

The typicality requirement of Rule 23(a)(3) “is satisfied if ‘each class member’s claim arises from the same course of events, and each class member makes similar legal arguments to prove the defendant’s liability.’” *In re Orion Sec. Litig.*, No. 08 Civ. 1328 (RJS), 2008 WL 2811358, at *5 (S.D.N.Y. July 7, 2008) (quoting *In re Drexel Burnham Lambert Grp., Inc.*, 960 F.2d 285, 291 (2d Cir. 1992)). “[T]he claims of the class representative need not be identical those of all members of the class. ‘[T]he typicality requirement may be satisfied even if there are factual dissimilarities or variations between the claims of the named plaintiffs and those of other class members, including distinctions in the qualifications of the class members.’” *Janbay v. Canadian Solar, Inc.*, 272 F.R.D. 113, 120 (S.D.N.Y. 2010) (quoting *Bishop v. N.Y. City Dep’t of Hous. Pres. & Dev.*, 141 F.R.D. 229, 238 (2d Cir. 1992)).

Yao's claims are typical of those of the Class. Yao alleges, as do all Class members, that Defendants violated the Exchange Act by making what they knew or should have known were false or misleading statements of material facts and/or by omitting to disclose material facts concerning UiPath. Yao, as did all Class members, purchased UiPath securities during the Class Period at prices alleged to have been artificially inflated by Defendants' misrepresentations or omissions, and was damaged upon the disclosure of those misrepresentations and/or omissions that drove UiPath's share price downward. These shared claims, which are based on the same legal theory and arise from the same events and course of conduct as the Class's claims, satisfy the typicality requirement of Rule 23(a)(3).

The adequacy of representation requirement of Rule 23(a)(4) is satisfied where "(1) class counsel is qualified, experienced, and generally able to conduct the litigation; (2) there is no conflict between the proposed lead plaintiff and the members of the class; and (3) the proposed lead plaintiff has a sufficient interest in the outcome of the case to ensure vigorous advocacy." *Foley v. Transocean Ltd.*, 272 F.R.D. 126, 131 (S.D.N.Y. 2011); *see also Dookeran v. Xunlei Ltd.*, No. 18-cv-467 (RJS), 2018 WL 1779348, at *2 (S.D.N.Y. Apr. 12, 2018) (same).

As set forth in greater detail below, in Pomerantz, Yao has retained counsel highly experienced in vigorously and efficiently prosecuting securities class actions such as this Action, and submits her choice of Pomerantz to the Court for approval as Lead Counsel pursuant to 15 U.S.C. § 78u-4(a)(3)(B)(v). There is no evidence of antagonism or conflict between Yao's interests and the interests of the Class. Moreover, Yao has submitted a signed Certification declaring her commitment to protect the interests of the Class (*see Lieberman Decl.*, Ex. C), and the significant losses incurred by Yao demonstrate that she has a sufficient interest in the outcome of this litigation to ensure vigorous advocacy.

Further demonstrating her adequacy, Yao has submitted a Declaration attesting to, *inter alia*, her background, her investing experience, her understanding of the responsibilities of a Lead Plaintiff pursuant to the PSLRA, her decision to seek appointment as Lead Plaintiff, and the steps that she is prepared to take to prosecute this litigation on behalf of the Class. *See id.*, Ex. D.

D. Yao Will Fairly and Adequately Represent the Interests of the Class and Is Not Subject to Unique Defenses

The presumption in favor of appointing Yao as Lead Plaintiff may be rebutted only upon proof “by a member of the purported plaintiff class” that the presumptively most adequate plaintiff:

- (aa) will not fairly and adequately protect the interests of the class; or
- (bb) is subject to unique defenses that render such plaintiff incapable of adequately representing the class.

15 U.S.C. § 78u-4(a)(3)(B)(iii)(II).

Yao’s ability and desire to fairly and adequately represent the Class has been discussed above. Yao is not aware of any unique defenses Defendants could raise that would render her inadequate to represent the Class. Accordingly, Yao should be appointed Lead Plaintiff for the Class.

II. LEAD PLAINTIFF’S SELECTION OF COUNSEL SHOULD BE APPROVED

The PSLRA vests authority in the Lead Plaintiff to select and retain Lead Counsel, subject to Court approval. *See* 15 U.S.C. § 78u-4(a)(3)(B)(v). The Court should only interfere with Lead Plaintiff’s choice if necessary to “protect the interests of the class.” 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II)(aa); *see also Kaplan v. S.A.C. Capital Advisors, L.P.*, 311 F.R.D. 373, 383 (S.D.N.Y. 2015) (“The PSLRA evidences a strong presumption in favor of approving a properly-selected lead plaintiff’s decisions as to counsel selection and counsel retention.” (quoting *Varghese v. China Shenghuo Pharm. Holdings, Inc.*, 589 F. Supp. 2d 388, 398 (S.D.N.Y. 2008))); *see also In re Molson Coors Brewing Co. Sec. Litig.*, 233 F.R.D. 147, 151 (D. Del. 2005).

Here, Yao has selected Pomerantz as Lead Counsel for the Class. Pomerantz is highly experienced in the areas of securities litigation and class actions and has successfully prosecuted numerous securities litigations and securities fraud class actions on behalf of investors, as detailed in its firm resume submitted herewith. *See* Lieberman Decl., Ex. E. In overview, Pomerantz is a premier firm in the area of securities litigation based in New York, with offices in Chicago, Los Angeles, Paris, France, London, England, and Tel Aviv, Israel. *See id.* For more than 85 years, Pomerantz has represented defrauded investors. *See id.* As lead counsel in *In re Petrobras Securities Litigation*, No. 14-cv-09662 (S.D.N.Y.), Pomerantz recently secured a recovery of \$3 billion on behalf of investors in the securities of Petrobras, the largest settlement ever in a class action involving a foreign issuer and the fifth largest class action settlement ever achieved in the United States. *See id.* Petrobras is part of a long line of record-setting recoveries led by Pomerantz, including the \$225 million settlement in *In re Comverse Technology, Inc. Securities Litigation*, No. 1:06-cv-01825 (E.D.N.Y.), in June 2010, and the \$90 million settlement in *Klein v. Altria Group, Inc. et al*, No. 3:20-cv-00075 (E.D. Va.) in March 2022. *See id.* In addition to Pomerantz, Yao is also represented by the Hao Law Firm in this litigation.

As a result of its extensive experience in litigation involving issues similar to those raised in the instant Action, Yao's counsel, Pomerantz, has the skill, knowledge, expertise, and experience that will enable the firm to prosecute this Action effectively and expeditiously. Thus, the Court may be assured that by approving Yao's selection of Pomerantz as Lead Counsel, the members of the Class will receive the best legal representation available.

CONCLUSION

For the foregoing reasons, Yao respectfully requests that the Court issue an Order: (1) appointing Yao as Lead Plaintiff for the Class; and (2) approving proposed Lead Plaintiff's selection of Pomerantz as Lead Counsel for the Class.

Dated: November 6, 2023

Respectfully submitted,

POMERANTZ LLP

/s/ Jeremy A. Lieberman

Jeremy A. Lieberman

J. Alexander Hood II

Thomas H. Przybylowski

600 Third Avenue, 20th Floor

New York, New York 10016

Telephone: (212) 661-1100

Facsimile: (917) 463-1044

jalieberman@pomlaw.com

ahood@pomlaw.com

tprzybylowski@pomlaw.com

*Counsel for Wu Wang Yao and Proposed Lead
Counsel for the Class*

HAO LAW FIRM

Junbo Hao

Room 3-401 No. 2 Building,

No. 1 Shuangliubei Street

100024 Beijing

People's Republic of China

Telephone: +86 137-1805-2888

jhao@haolaw.cn

Additional Counsel for Wu Wang Yao